

CHARLES M. SEBY
Nevada Bar No. 15459
BOWMAN AND BROOKE LLP
2901 North Central Avenue, Suite 1600
Phoenix, Arizona 85012
(602) 643-2300 (Telephone)
(602) 248-0947 (Facsimile)
charles.seby@bowmanandbrooke.com

MARIO D. VALENCIA
Nevada Bar No. 6154
ATTORNEY AT LAW, LLC
40 S. Stephanie St., Ste. 201
Henderson, Nevada 89012
(702) 384-7494 (Telephone)
(702) 384-7545 (Facsimile)
valencia.mario@gmail.com

*Attorneys for Defendants Invacare Corporation
and Direct Supply, Inc.*

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

BARBARA HERPOLSHEIMER, as Special
Administratrix to the Estate of BERT WEAVER,

Plaintiff,

v.

MARQUIS COMPANIES I, INC., a Foreign
Corporation, dba MARQUIS PLAZA REGENCY
and/or MARQUIS PLAZA REGENCY POST
ACUTE REHAB and/or MARQUIS CARE AT
PLAZA REGENCY; DIRECT SUPPLY, INC., a
Foreign Corporation; INVACARE
CORPORATION, a Foreign Corporation; ROE
RETAILER; DOES I through X; and ROE
CORPORATIONS I through X, inclusive,

Defendants.

No.: 2:21-cv-00659-RFB-EJY

**STIPULATION TO AMEND
CASE DEADLINES
(Third Request)**

Defendant Invacare Corporation (“Invacare”); Plaintiff Barbara Herpolsheimer, as Special
Administratrix to the Estate of Bert Weaver (“Plaintiff”); Defendant Marquis Companies I, Inc.
 (“Marquis”); and Defendant Direct Supply, Inc. (“Direct Supply”), by and through their respective
counsel of record, hereby stipulate to a limited extension of the remaining expert disclosure and

corresponding deadlines in the current scheduling order and discovery plan in this matter, for the reasons explained below.¹

DISCOVERY COMPLETED TO DATE

- The parties conducted the FRCP 26(f) conference on June 25, 2021;
- The parties have each served their FRCP 26(a) initial disclosures and continue to supplement the same;
- The parties have propounded and responded to written discovery, including requests for production, requests for admission, and interrogatories;
- The parties have propounded and disclosed third-party discovery obtained through FRCP 45 subpoenas;
- The parties conducted an inspection of the subject Hoyer lift on November 11, 2021;
- The deposition of Mark Rosen, M.D. was conducted on December 7, 2021;
- The deposition of Christopher Choi, M.D. was conducted on January 5, 2022;
- The deposition of David Connolly was conducted on March 7, 2022;
- The deposition of Claudia Cortes was conducted on March 16, 2022;
- The deposition of Brenda Gutierrez was conducted on March 16, 2022;
- The deposition of Augustine Ackom was conducted on March 31, 2022;
- Plaintiff served her product liability expert disclosures on June 3, 2022; and
- The parties filed a proposed discovery confidentiality order on June 15, 2022.

DISCOVERY TO BE COMPLETED PURSUANT TO LR 26-3(b)

- Deposition of Marquis' FRCP 30(b)(6) witness(es);
- Deposition of additional relevant employees (as necessary);
- Deposition of Plaintiff's product liability expert Scott Ganaja;
- Depositions of Plaintiff's non-product liability experts;
- Depositions of Defendant experts of Invacare and Direct Supply;
- Depositions of Defendant experts of Marquis;
- Additional depositions (as necessary);

¹ This is the third such discovery extension requested in this matter. *See* LR IA 6-1(a).

- Additional written discovery (as necessary);
- Other third-party discovery as needed.

REASONS FOR REQUESTED EXTENSION PURSUANT TO LR 26-3(c)

Given the number of parties, counsel, and experts involved, the parties agree that all expert disclosures and related expert depositions cannot be made even with reasonable diligence under the current scheduling order.² Further, because of the number of parties, counsel, claims, and experts involved, the parties will not be able to complete the remaining necessary depositions and discovery within the less than 75 days of discovery in the current period. The plaintiff served her product liability disclosures on June 3, 2022, and her expert opined a defect opinion (unexpected by both Invacare and Direct Supply) as to the material in the warning label of the alleged subject sling—which was disposed of, and which therefore is not available for inspection—and not as to the subject lift. Thus, good cause exists for the parties' request pursuant to LR IA 6-1 and LR 26-3. Each party agrees that there will be no prejudice to any party by this minor amendment of the schedule, and they agree it will enable reasonable additional time to complete expert disclosures and to permit scheduling of remaining depositions. The parties have acted in good faith to request this extension and have no intent, nor reason, to delay the resolution of this matter.

NEW DISCOVERY DEADLINES PURSUANT TO LR 26-3(d)

- Deadline for Plaintiff's non-product liability initial expert disclosures: July 3, 2022 to **August 2, 2022.**
- Deadline for Defendants' initial expert disclosures: July 3, 2022 to **August 2, 2022.**
- Deadline for rebuttal expert disclosures: August 2, 2022 to **September 1, 2022.**
- Discovery cut-off August 19, 2022 to **September 30, 2022.**
- Deadline to file dispositive motions: September 20, 2022 to **October 31, 2022.**
- Proposed Joint Pre-Trial Order: October 20, 2022 to **November 30, 2022.**

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² Multiple members of the immediate family of the undersigned counsel for Invacare have tested positive for COVID-19 in the past three weeks, and an ongoing infection at home has required attention and limited productivity of the same counsel.

1 If this extension is granted, the parties anticipate being able to conduct all additional discovery
2 within the stipulated extended deadlines. This request for extension of discovery deadlines is made by
3 the parties in good faith and not for the purpose of delay.

4 DATED this 15th day of June, 2022.

5 **BOWMAN AND BROOKE LLP**

HENNESS & HAIGHT

6 By: /s/ Charles M. Seby
7 Charles M. Seby
8 Nevada Bar No. 15459
9 Suite 1600, Phoenix Plaza
2901 North Central Avenue
Phoenix, Arizona 85012-2736

By: /s/ Stephen J. Mendenhall
Mark G. Henness, Esq.
Stephen J. Mendenhall, Esq.
8972 Spanish Ridge Avenue
Las Vegas, Nevada 89148

Attorneys for Plaintiff

10 Mario D. Valencia
11 Nevada Bar No. 6154
12 Attorney at Law, LLC
40 S. Stephanie St., Ste. 201
13 Henderson, Nevada 89012

14 *Attorneys for Defendants Invacare
Corporation and Direct Supply, Inc.*

15 **MESSNER REEVES LLP**

16 By: /s/ Brittany Lewis
17 David J. Mortensen, Esq.
18 Marjorie E. Kratsas, Esq.
Brittany Lewis, Esq.
8945 West Russell Road, Suite 300
19 Las Vegas, Nevada 89148

20 *Attorneys for Defendant Marquis
Companies I, Inc.*

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22 **IT IS SO ORDERED:**

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UNITED STATES MAGISTRATE JUDGE

25 DATED: June 16, 2022
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